

### REMARKS

The Examiner has essentially repeated his previous rejections; therefore, a Notice Of Appeal is attached hereto. To put the application in condition for appeal, all rejections not going to the merits of the invention have been addressed herein. The claims have also been carefully reviewed and a few additional changes made to avoid any possibility of further section 112 rejections.

#### Claim Rejections – 35 U.S.C. §112

The Office Action rejects claims 1 – 18, 23, and 24 under 35 U.S.C. 112, first paragraph, on the basis that the specification does not support the base piece covering less than 50% of the chest in a normal adult human. This rejection is respectfully traversed because this feature is disclosed in the specification, but the limitation has been removed as requested by the Examiner to place the application in condition for appeal.

Claims 1 – 18, 23 – 25, 40, and 41 have been rejected because there was insufficient antecedent for the limitation "the inside of the fly box" in claim 1, line 10, and "the inside" in claim 25, line 5. Claims 1 and 25 have been amended to address this rejection.

#### Claim Rejections – 35 U.S.C. §103

The Office Action rejects claims 1, 2, 4, and 40 under 35 U.S.C. 103(a) as being unpatentable over Wimler in view of Gillespie. This rejection is respectfully traversed.

Before discussing these errors in the Examiner's analysis, it is important to note that, for the Examiner to make his analysis, the base piece is the piece 6 attached to the straps 7, and the fly box is the large box 9. There are three things wrong with the Examiner's analysis. First, the Examiner states that the hinge/fastener described at column 1, lines 43 – 47 is "inherently releasable". There is no evidence for this alleged "inherency" in Wimler. From FIGS. 2 and 4, the hinge appears to be a metal rod welded to the box 9, which rod rotates in a hollow metal cylinder welded to the cover 6 (or the rod could be welded to the cover, and hollow cylinder welded to the box.) We think this part must be metal because it would have to be very strong to support the box in the open

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position shown in FIG. 2. Thus, a key part of the Examiner's argument is simply wrong. Second, to apply Gillespie to Wimler, Wimler has to be significantly modified. In Wimler, the fly box is the box 9. This is secured to the base piece 6 by the hinge, which, as mentioned above, is a metal rod/cylinder type. A piece of hook/loop material as used in Gillespie replacing the hinge of Wimler would not be secure enough to support the metal or wood box 9. Thus, a simple modification of Wimler as taught by Gillespie would make Wimler unsuitable for its intended purpose. To make it suitable, one would have to replace the single hinge of Wimler with at least a pair of hook/loop fasteners, and then either attach a hinge to the hook/loop fasteners or use the hook/loop fasteners as a hinge. Gillespie does not suggest either of these modifications. Thus, making the combination requires a substantial reconstruction and redesign of the elements shown in the primary reference, and therefore is not a proper combination. MPEP 2143.01, last section. Third, Wimler shows a waist fly box, not a chest fly box. The chest is defined in the dictionary as the portion of the body enclosed by the ribs and breastbone. See *The American Heritage Dictionary of the English Language*, Houghton Mifflin Company, Boston, 1980, page 232 (copy enclosed). Thus, another modification of Wimler is required to meet the claim 1.

With respect to claims 2 and 4, these claims depend on a patentable claim and therefore are also patentable. Further, claim 4 includes a horizontal support plate which is not shown in Wimler and therefore is patentable on its own.

The Office Action rejects claims 3, 5, 6, 23 – 25, and 41 under 35 U.S.C. 103(a) as being obvious over Wimler in view of Gillespie and further in view of Hutton. This rejection is respectfully traversed. Claims 3, 5, 6, 23, and 24 depend on a patentable claim. The Office Action states that the fishing rod holder in Hutton is configured to hold a fishing rod in a horizontal position. It is configured to hold a rod in the vertical position. When the rod is inserted, friction pivots the rod holder which presses the rod against the side of the tackle box to hold it. With regard to claim 5, the rod holder is attached to the box, not the base piece. With regard to claim 23, the rod holder is not a U-shaped trough. The Examiner says that the bracket can be considered to be a U-shaped trough. See *The American*

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*Heritage Dictionary of the English Language*, Houghton Mifflin Company, Boston, 1980, page 1376 (copy enclosed). This is not possible under any dictionary meaning of trough. The Examiner further states that it would be obvious to employ other configurations, since no stated problem was solved. This statement is specifically traversed and challenged. A trough is a very different configuration, not at all like the bracket of Hutton. A reference is required to show such interchangeability. Further, a problem is solved in that the bracket of Hutton would be very clumsy to use while fly fishing, and to work it depends on the rod being held in a position that interferes with changing a fly. With regard to claim 25, the box support and the fly rod holder are not integrally made of a single piece of rigid material. The Examiner states that it is obvious to make the box support and the fly rod holder integral, but this position is specifically traversed. These parts perform very different functions, and it is not obvious to make them of one piece. Larson does not support the Examiner's position because in Larson the parts were rigidly secured together as a single Unit. See *In re Larson*, 144 USPQ 347, 349, at headnote 1. In Hutton, the fishing rod holder would not work if it was made as an integral unit with the fly box support. Claim 25 also includes the limitation that the fly box is releasably secured to the base piece so the inside of the fly box can be accessed without removing it from the base piece. As indicated above, Gillespie teaches against this limitation. Finally, the rod holder is not configured to hold the fishing rod in the horizontal position, but in a vertical position. The MPEP expressly states that all claim limitations must be considered. MPEP 2143.03. On this basis alone, the rejection is improper.

Claims 1 and 2 were rejected under 35 U.S.C. 103(a) as being unpatentable over Volmer. This rejection is respectfully traversed. Volmer cannot make claims 1 and 2 obvious because it does not disclose a key feature of claim 1; namely, the inside of the fly box can be accessed without removing it from the base piece. This key feature allows the user to access the fly box with one hand. It is fundamental patent law that specific limitations distinguishing over the references should not be ignored. *In re Glass*, 176 USPQ 489, 491 (CCPA 1973).

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Based upon the foregoing amendments and remarks, claims 1 – 21, 23 – 25, 40, and 41 are patentable and their reconsideration and allowance are respectfully requested. The Notice Of Appeal, and appropriate fee payment, is attached hereto. If any additional fee is seen to be required, please charge it to Deposit Account No. 50-1848.

Respectfully submitted,  
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